

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 CV 8226

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KEVIN SCULLARK,

Plaintiffs,

- against -

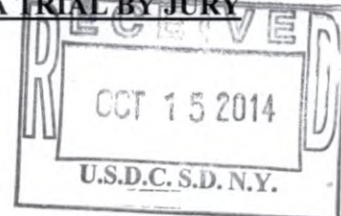
POLICE OFFICER JHONATTAN JOSESANTANA
& JOHN DOE POLICE OFFICERS 1-4,

Defendants.
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COMPLAINT

Civ. No. CV

PLAINTIFF DEMANDS
A TRIAL BY JURY



Plaintiff, by his attorney, GIORDANO LAW OFFICES PLLC, complaining of Defendants, respectfully alleges, upon information and belief:

PRELIMINARY STATEMENT

1. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 *et seq.* for an incident of racial profiling and deprivation of protected rights, including rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, that transpired on January 27, 2014, when police officers employed by THE CITY OF NEW YORK 46th Precinct, including Defendant JHONATTAN JOSESANTANA (hereinafter "JOSESANTANA") used excessive force, wrongfully detained and falsely arrested Plaintiff in New York County, New York.

2. On January 27, 2014, at approximately 11 a.m., after Plaintiff purchased aspirin at his corner store at University Avenue and 176th Street in the Bronx, NY, and then exited the store, he was bum rushed by Defendant Police Officers who grabbed him, slammed him against a wall at that location and searched through all of his pockets.

3. Defendants did not have reasonable suspicion to stop Plaintiff who committed no crime, made no furtive movements and did nothing other than enter a store, purchase Aleve medication and exit the store immediately thereafter.

4. After slamming him against the wall, searching all of his pockets and in and out of his clothes and pants and finding nothing other than Aleve pain medication, Defendants arrested Plaintiff, placing handcuffs on his wrists in an extremely tight manner, causing extreme pain. Defendants did not have probable cause to detain or arrest the Plaintiff, whom the District Attorney's Office refused to prosecute after Plaintiff had spent several hours imprisoned.

JURISDICTION AND VENUE

5. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331, in that this action arises under 42 U.S.C. § 1983 *et seq.* and the Fourth and Fourteenth Amendments to the United States Constitution.

6. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) and (c) because all Defendants are subject to personal jurisdiction in this District.

7. This action was commenced within three years after the cause of action herein accrued.

THE PARTIES

8. At all relevant times, Plaintiff is a resident of New York County, New York.

9. At all times relevant hereto, Defendants JOSESANTANA and JOHN DOES 1-4, acted in their official capacities, and were employees, agents, or servants of the City of New York, acting under color of state law, within the meaning of 42 U.S.C. § 1983 *et seq.*

AS AND FOR A FIRST CLAIM PURSUANT TO 42 U.S.C. § 1983 BY PLAINTIFF AGAINST ALL NAMED POLICE OFFICERS, INCLUDING JOSESANTANA, FOR FALSE ARREST

10. Plaintiff repeats and realleges each and every allegation contained in the preceding

paragraphs as if fully set forth herein.

11. Defendants, acting without probable cause, intentionally, without justification and with deliberate indifference to the rights, life and liberty of Plaintiff, falsely arrested and imprisoned Plaintiff. Defendants handcuffed Plaintiff, brought him to the Precinct, held him under arrest and attempted to cause criminal charges to be filed against Plaintiff, until the District Attorney's Office refused to prosecute Plaintiff (343'd) who did not commit any crime.

12. As a result of the foregoing, Defendants, acting under color of state law, violated 42 U.S.C. § 1983 *et seq.* and deprived Plaintiff of rights secured by the Constitution and laws of the United States, including those rights protected by the Fourth and Fourteenth Amendments, his right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitutions of the United States and the State of New York.

13. As a result of the foregoing, Plaintiff was caused to suffer bodily harm, loss of liberty and life, substantial physical, emotional and psychological pain, and was otherwise injured.

AS AND FOR A SECOND CLAIM PURSUANT TO 42 U.S.C. § 1983 BY
PLAINTIFF AGAINST ALL NAMED POLICE OFFICERS INCLUDING
JOSESANTANA FOR ASSAULT AND BATTERY

14. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

15. As a result of the foregoing, Plaintiff was caused to suffer bodily harm, substantial physical, emotional, mental and psychological pain, and was otherwise injured.

16. As a result of the foregoing, Defendants, acting under color of state law, violated 42 U.S.C. § 1983 *et seq.* and deprived Plaintiff of rights secured by the Constitutions and laws of the United States and the State of New York, including those rights protected by the Fourth and Fourteenth amendments, his right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitution of the United States and the State of New York.

WHEREFORE, Plaintiff demands the following relief jointly and severally against all of the Defendants:

- a. Compensatory damages;
- b. Punitive damages;
- c. The convening and empanelling of a jury to consider the merits of the claims herein;
- d. Costs and interest and attorney's fees;
- e. Such other and further relief as this court may deem appropriate and equitable.

Dated: New York, New York
October 6, 2014

Yours, etc.,

Giordano Law Offices
Attorney for Plaintiff

By: _____

Carmen S. Giordano (CSG-3927)
226 Lenox Avenue
New York, NY 10027
(212) 406-9466